Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

Docket No. 77-555

RUTH E. BUCK,

Petitioner,

against

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK: Dr. Bernard E. Donovan—former Superintendent of Schools, Dr. Nathan Brown—former Superintendent of Schools, Dr. Irving Anker—former Superintendent of Schools, G. Gary Sousa—Law Secretary, Sheldon Wein—Teacher at Franklin K. Lane High School, Mary Cohen—Assistant Principal at Franklin K. Lane High School, Morton Selub—Principal at Franklin K. Lane High School, Elizabeth O'Daly—District Superintendent of School District #19, Dr. Jacob Zack—Assistant Superintendent in charge of High Schools, Dr. Beverly Lipschitz—Guidance Supervisor of School District #19, Daisy K. Shaw—Director of the Bureau of Educational and Vocational Guidance, Murray Cohn—Principal—High School of Commerce (now Brandeis High School), Evelyn Konigsberg—former Principal of Washington Irving High School, Charles Foy—Receptionist—Medical Division, Sarah Braphart—Secretary to Medical Director, Dr. Naomi Pool—Acting Assistant Medical Director, Dr. Murray G. Fletcher—former Ass't Medical Director, Dr. Sidney Leibowitz—Medical Director, Dr. Sidney Rosenberg—Asst. Superintendent in charge of Personnel, Dr. Theodore H. Lang—Deputy Superintendent in charge of Personnel, Allegedly Honorable Daniel Gutman—Trial Examiner, each of the aforementioned individually and as employees of the City of New York;

and

(See next page for additional defendants.)

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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THE DIVISION OF HUMAN RIGHTS OF THE STATE OF NEW YORK: Joseph Sperazi—Field Representative, Walter P. Offut, Jr.—Senior Field Representative, Jean MacPherson—Regional Director, Arthur Stern—Area Director, each of the aforementioned individually and as employees of the Division of Human Rights of the State of New York;

and

THE COMMISSION OF HUMAN RIGHTS OF THE CITY OF NEW YORK: John Doe and James Doe (said names of John Doe and James Doe being fictitious, their true names being unknown to plaintiff), Robert Perez-Wilson—Acting Chief, Investigations Division, each of the aforementioned individually and as employees of the Commission on Human Rights of the City of New York;

and

THE NEW YORK STATE SUPERVISORY COMMITTEE: Norman Frankel—Attorney and former Investigator, Harold G. Israelson, Attorney and former Chairman, each of the aforementioned individually and as employees of the New York State Supervisory Committee;

and

THE CORPORATION COUNSEL OF THE CITY OF NEW YORK: Edith A. Gordon—Attorney, Charles D. Maurer—Attorney, each of the aforementioned individually and as employees of the Corporation Counsel of the City of New York;

and

THE DISTRICT ATTORNEY OF THE BOROUGH OF BROOKLYN: Jane Jones and John Jones and James Jones and Jack Jones (said names being fictitious, their true names being unknown to plaintiff), each of the aforementioned individually and as employees of the District Attorney of the Borough of Brooklyn;

and

THE DISTRICT ATTORNEY FOR THE BOROUGH OF MANHATTAN: John Smith (said name of John Smith being fictitious, his true name being unknown to plaintiff), Michael Alan Richman, each of the aforementioned individually and as employees of the District Attorney of the Borough of Manhattan;

and

Abraham Mark Levien—Attorney, William Goffen—Attorney; David Lubash—Attorney; Marjorie O'Connell—Attorney; Allegedly Honorable Frederick Backer—Justice of the Supreme Court of the State of New York—Borough and County of Manhattan—individually;

and

others; whose identities are not ascertained.

Defendants.

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Abraham Mark Levien—Attorney, William Goffen—Attorney; David Lubash—Attorney; Marjorie O'Connell—Attorney; Allegedly Honorable Frederick Backer—Justice of the Supreme Court of the State of New York—Borough and County of Manhattan—individually;

and

others; whose identities are not ascertained.

Defendants.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Respondents Frederick Backer, the District Attorneys of New York and Kings Counties and the staffs of the District Attorneys of New York and Kings Counties oppose the petition for a writ of certiorari to review of the judgment of the United States Court of Appeals for the Second Circuit.

Opinions Below

The opinion of the United States District Court for the Eastern District of New York which granted judgment dismissing the complaint against respondents Backer, the

District Attorneys of New York and Kings Counties and their employees appears in the Appendix to the Petition for a Writ of Certiorari (hereinafter "Petitioner's Appendix") at pages A 18 to and including A 22. The opinion of the United States Court of Appeals for the Second Circuit affirming the District Court, is reported at 553 F. 2d 315. The asserted basis for jurisdiction is Title 28 U.S.C. Section 1254, subdivision 1, which authorizes petitions for a writ of certiorari from final judgments of the Courts of Appeals.

Question Presented

Whether a complaint seeking money damages against a State Judge and the District Attorneys of New York and Kings Counties and their Staffs was properly dismissed?

Statement of the Case

Petitioner, *pro se,* formerly an employee of the Board of Education of the City of New York, commenced this action pursuant to 42 U.S.C. §§ 1983, 1985 and 1986 alleging deprivation of civil rights arising out of her discharge from her position as a tenured guidance counsellor.

Defendant Hon. Frederick Backer was sued in his official capacity as Justice of the Supreme Court of New York State to redress grievances which petitioner did not express anywhere in the complaint, but which, according to the District Court (Hon. Orrin G. Judd, D.J.) in a Memorandum and Order, dated February 17, 1972 (Petitioner's Appendix A 19) included the following:

> "The only basis for relief against Justice Backer as stated by the plaintiff is that he believed untrue testimony submitted to him by defendants in a case before him."

The District Court found that Justice Backer, who had died prior to its decision, was immune as a judicial officer from suit for damages under 28 U.S.C. § 1983. The District Court also determined from the record before it that petitioner failed to state a claim under the Constitution and Laws of the United States to support a civil rights action.

On October 15, 1971 the District Court dismissed in open court the complaint against the District Attorneys of New York and Kings Counties and their staffs (Petitioner's Appendix, A 20). With respect to Detective Buda, who allegedly occupied an office in the school where petitioner worked, and who allegedly failed to assist petitioner in prosecuting her claims asserted against school officials, the District Court stated in its Memorandum and Order (Petitioner's Appendix A 21):

> "Plaintiff does not state why detective Buda was obligated to aid her or how he could have prevented the acts allegedly perpetrated against her. The racial slur attributed to Detective Buda was clearly not directed at plaintiff."

The District Court reaffirmed its earlier ruling from the bench that, regarding the general claims against defendant Buda and any other employees of the District Attorneys, the petitioner's assertions were "vague and conclusory" and insufficient to state a claim.

Reasons for Denying the Petition for Certiorari

POINT I

The dismissal of the complaint as to Judge Backer was proper.

A judge exercising his judicial function is not liable for damages under 42 U.S.C. § 1983 even though he acts erroneously or irregularly. Such an action is barred by the doctrine of judicial immunity. *Imbler* v. *Pachtman,* 424 U.S. 409 (1976); *Scheuer* v. *Rhodes,* 416 U.S. 232 (1974); *Pierson* v. *Ray,* 386 U.S. 547 (1967). The alleged claim for damages against Judge Backer clearly arose out of his official duties. Dismissal of the complaint against Judge Backer was therefore proper, and the Court of Appeals did not err in affirming the dismissal as to Judge Backer.

POINT II

The dismissal of the complaint for failure to state a claim upon which relief may be granted as to the district attorneys' staffs was proper.

The District Court correctly held that petitioner's specific allegations regarding the conduct of defendant Buda and general allegations regarding Buda and other employees of the District Attorneys of New York and Kings Counties failed to state a claim upon which relief may be granted. Judge Judd stated (Petitioner's Appendix, A 22):

> "A complaint in a case like this must set forth facts showing some intentional and purposeful discrimination. *Snowden* v. *Hughes,* 321 U.S. 1, 64 S. Ct. 397 (1944). Plaintiff is bound to do more than merely paraphrase statutory language. Vague and conclusory allegations are insufficient to state a claim. *Powell*

v. *Workmen's Compensation Board,* 327 F. 2d 131, 137 (2d Cir. 1964)."

A reading of the complaint herein reveals that it fails to meet the requirements of essential pleading set forth in Rule 8, Federal Rules of Civil Procedure for there is "neither a short and plain statement of the claim showing that the pleader is entitled to relief as required by Rule 8(a)(2), F.R.Civ.P. nor, indeed anything other than a potpourri of allegations, many of them duplicitous and intermingled in a most confusing fashion." *Cooper* v. *North Jersey Trust Co. of Ridgewood,* 250 F. Supp. 237, 241 (D.C.N.Y. 1965).

Even when construed in the most liberal fashion, a complaint must at the minimum reveal the basis upon which relief is sought. This deficiency in the instant case results in no claim being stated against the defendant district attorneys or the defendants employed by them. *Powell* v. *Workmen's Compensation Board, supra; Rhodes* v. *Houston,* 202 F. Supp. 624, 629 (D.C. Neb. 1962), *aff'd.* 309 F. 2d 959 (8th Cir. 1962), *cert. den.* 383 U.S. 971 (1966).

There is no showing in the complaint that any of the petitioner's rights were denied by any of these defendants; hence the statements made therein are wholly conclusory. The federal courts have consistently held that conclusory allegations are insufficient to state a cause of action under 42 U.S.C. § 1983. *Powell* v. *Workmen's Compensation Board, supra; Israel* v. *City Rent and Rehabilitation Administration,* 285 F. Supp. 908 (S.D.N.Y. 1968).

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: New York, New York
December 28, 1977

Respectfully submitted,

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